IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

Crl.MC.No. 3946 of 2006()

C.C.NO.1136/04 OF J.F.C.M COURT-I, KOLLAM

PETITIONER: ACCUSED:

K.A.SAM, S/O.APPUKUTTAN,
ERUMUDI ESTATE, NAMBIARKUNNU VIA,
S.BATHERY, WAYANAD.

BY ADV. SRI.RAFFEEKH.K

RESPONDENTS: COMPLAINANT & STATE:

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1. RAVEENDRANATH,
S/O.K.NEELAKANTAN, ANJALI, AGASTHYANCODE,
ANCHAL P.O., KOLLAM.

2. MINI, D/O. RAVEENDRANATH,
ANJALI, AGASTHYANCODE, ANCHAL P.O. KOLLAM.

3. STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3946 OF 2006

Dated this the 1st day of December, 2006.

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The case was initiated as early as in 2004. The crux of the allegations is that the petitioner issued the cheque in question to his father-in-law for discharge of the liability to return gifts etc., after the divorce was effected through court, of a marriage between the petitioner and the daughter of the complainant. The trial in the case has not started, it is submitted. The petitioner has rushed to this Court with this petition in 2006 with a prayer that the prosecution may be quashed.

2. What are the reasons ? The short reason urged is that the allegations are false. The signature in the cheque is admitted. At the Bar, it is further submitted that the notice of demand did not evoke any response. How can this Court decide at this stage, whether the allegations are true or false ? Certainly that onerous responsibility cannot be taken up by this Court, at this stage of the proceedings, exercising jurisdiction under Section 482 Cr.P.C. The petitioner must certainly raise

his contentions before the trial court and try to establish his defence. The prayer to quash the proceedings at this stage is evidently misconceived.

3. The learned counsel for the petitioner submits that the petitioner has to travel for a long distance - more than 500 kms. to reach the court where the case is now pending. That is no reason to quash the proceedings. But certainly the right of the petitioner to apply for exemption from personal appearance will remain unfettered by the dismissal of this Crl.M.C. He can make appropriate application for exemption. I find no reason to assume that the learned Magistrate would unnecessarily and ritualistically insist on the personal appearance of the petitioner on all dates of posting. Unless such appearance is necessary for the progress of the case, it is certainly not necessary for the learned Magistrate to insist on such personal appearance.

4. With the above observations, this Crl.M.C is, dismissed.

R.BASANT
JUDGE

rtr/